

As a small business owner who manages the cartoon reprint rights for my husband, new Orphan Works legislation could have the potential to damage our business and make it nearly impossible to continue to earn a reasonable income to support our family.

When the 2008 Orphan Works legislation was introduced, it became obvious to me, a layperson, that the purpose of this legislation was overly zealous and was disingenuous to the original intent of providing a legal remedy for organizations such as libraries, academic institutions, documentaries, and museums to use creative works that may or may not have falling within the public domain or if the copyright owner could not be found.

More specifically, the legislation was written in a way that would make it too easy to claim orphan status for creative works, whether or not the usage was for commercial use. The legislation never defined what a diligent search was nor did it indicate how many databases creative works would need to be included in, who would run these databases, or what fees would be incurred to post your works on the databases. To summarize, the 2008 Shawn Bentley Orphan works Act was drafted in a manner that would make it very difficult for small business owners such as myself to prevent the unauthorized use of our creative works. For example, if the cost per image were \$1.00, the cost to upload my archive would be nearly \$8,000 per database. This doesn't factor in the time and labor to digitize the images and load them into the database.

Even if I did comply with the rules and posted our creative works in one or more databases it would be nearly impossible to stop infringers because the monies collected would not even come close to legal costs. The house version of the legislation had dark databases that would even prevent me from finding out who might have claimed our creative works as orphans. Additionally, because so many creative works would not have been supplied to these database due to current 1976 passive copyright law and the nature of creative people, the law would in fact, have the effect of making all creative works devalued because of the how easily available content could be orphaned and hence, free to use without much risk of penalty to the infringer.

To highlight this example, I can inequitably state that the Digital Millennium Copyright Act has in effect done this for Internet usage. As a small business owner, I find it nearly impossible to keep up with the cumbersome task of sending DMCA takedown notices. While the intention was to protect aggregate Internet companies, it in effect, has made the general public believe that it's ok to take images from search engines, social networking, and other websites with no real consequences. The cost and labor required to send the takedown notices is greater than any compensation I would receive. Additionally, many of our creative works are having the metadata, copyright headers, footers and all other identifying information stripped out of the images.

Where is the supporting data that indicates the critical need for Orphan Works Legislation? What studies have been done to show the drastic economic impact of small business owners and creative talent?

I would also ask the copyright office to look at who are the key supporter for Orphan Works legislation and what will they gain. Is it more important to protect the large corporations that need content cheaply vs. the original creators of the work? Some might assume that there is very little

value of copyrighted works after the initial publication but I can show evidence that a large portion of my family's income comes from the reprint usage rates of my husband's creative works going back 25 years.

If after careful review, it is determined that Orphan Works legislation is required, the copyright office could model an effective process similar to Canada. Canada has a very good orphan works system that avoids the moral hazard of the 2008 proposed legislation for a U.S. system. I would submit that the intent of the 2008 Shawn Bentley Orphan Works Act was never intended to remedy the need for non-commercial legitimate orphan works and therefore, while creative artists might support a model such as the Canadian system, there would be objections from large organizations that have ulterior motivations for seeking copyright law changes pertaining to orphan works.

In fact, in the current round of comments, one of the key legitimate users of orphan works, the Library Copyright Alliance (LCA) has stated "significant changes in the copyright landscape over the past seven years convince us that libraries no longer need legislative reform in order to make appropriate uses of orphan works." The LCA even goes on to say that the previous legislation was overly complex and that "instead make a simple one sentence amendment to the Copyright Act giving courts the discretion to reduce or remit statutory damages in appropriate circumstances."

In conclusion, it is my belief that if an Orphan Works bill is modeled after the Canadian system you will see very little resistance from the creative community and the legitimate users of Orphan Works would also be satisfied. If however, the legislation were modeled after the 2008 Orphan Works Act, then it would open the door to infringement by commercial users and devalue my husband's entire archive of creative works and in the process, make it nearly impossible for our family to continue to support ourselves with the income generated from my husband's creative works.

Respectively,
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